

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RICHARD LEE CARMICHAEL,

Plaintiff,

v.

ROMEO ARANAS, et. al.,

Defendants.

Case No. 3:17-cv-00025-MMD-WGC

ORDER

Before the court are Defendants' Motions for Leave to File Medical Records Under Seal in support of their opposition to Plaintiff's pending motion for temporary restraining order/preliminary injunction. (Electronic Case Filing (ECF) Nos. 15, 19.) Plaintiff did not oppose the motions.

"Historically, courts have recognized a general right to inspect and copy public records and documents, including judicial records and documents." *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (internal quotation marks and citation omitted). "Throughout our history, the open courtroom has been a fundamental feature of the American judicial system. Basic principles have emerged to guide judicial discretion respecting public access to judicial proceedings. These principles apply as well to the determination of whether to permit access to information contained in court documents because court records often provide important, sometimes the only, bases or explanations for a court's decision." *Oliner v. Kontrabecki*, 745 F.3d 1024, 1025 (9th Cir. 2014) (quoting *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1177 (6th Cir. 1983)).

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1 Documents that have been traditionally kept secret, including grand jury transcripts and
2 warrant materials in a pre-indictment investigation, come within an exception to the general right
3 of public access. *See Kamakana*, 447 F.3d at 1178. Otherwise, “a strong presumption in favor of
4 access is the starting point.” *Id.* (internal quotation marks and citation omitted). “The
5 presumption of access is ‘based on the need for federal courts, although independent—indeed,
6 particularly because they are independent—to have a measure of accountability and for the
7 public to have confidence in the administration of justice.’” *Center for Auto Safety v. Chrysler*
8 *Group, LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016), *cert. denied*, 137 S.Ct. 38 (Oct. 3, 2016)
9 (quoting *United States v. Amodeo (Amodeo II)*, 71 F.3d 1044, 1048 (2nd Cir. 1995); *Valley*
10 *Broad Co. v. U.S. Dist. Court-D. Nev.*, 798 F.2d 1289, 1294 (9th Cir. 1986)).

11 There are two possible standards a party must address when it seeks to file a document
12 under seal: the compelling reasons standard or the good cause standard. *See Center for Auto*
13 *Safety*, 809 F.3d at 1096-97. Under the compelling reasons standard, “a court may seal records
14 only when it finds ‘a compelling reason and articulate[s] the factual basis for its ruling, without
15 relying on hypothesis or conjecture.” *Id.* (quoting *Kamakana*, 447 F.3d at 1179). “The court
16 must then ‘conscientiously balance[] the competing interests of the public and the party who
17 seeks to keep certain judicial records secret.” *Id.* “What constitutes a ‘compelling reason’ is ‘best
18 left to the sound discretion of the trial court.” *Id.* (quoting *Nixon v. Warner Comm., Inc.*,
19 435 U.S. 589, 599 (1978)). “Examples include when a court record might be used to ‘gratify
20 private spite or promote public scandal,’ to circulate ‘libelous’ statements, or ‘as sources of
21 business information that might harm a litigant’s competitive standing.’” *Id.* (quoting *Nixon*,
22 435 U.S. at 598-99).

23 *Center for Auto Safety* described the good cause standard, on the other hand, as the
24 exception to public access that had been applied to “sealed materials attached to a discovery
25 motion unrelated to the merits of a case.” *Id.* (citing *Phillips ex rel. Estates of Byrd v. Gen.*
26 *Motors Corp.*, 307 F.3d 1206, 1213-14 (9th Cir. 2002)). “The ‘good cause language comes from
Rule 26(c)(1), which governs the issuance of protective orders in the discovery process: ‘The
court may, for good cause, issue an order to protect a party or person from annoyance,

1 embarrassment, oppression, or undue burden or expense.” *Id.* (citing Fed. R. Civ. P. 26(c)).

2 The Ninth Circuit has clarified that the key in determining which standard to apply in
3 assessing a motion for leave to file a document under seal is whether the documents proposed for
4 sealing accompany a motion that is “more than tangentially related to the merits of a case.”
5 *Center for Auto Safety*, 809 F.3d at 1101 (9th Cir. 2016). If that is the case, the compelling
6 reasons standard is applied. If not, the good cause standard is applied.

7 Here, Defendants seek to file exhibits under seal in connection with their opposition to
8 Plaintiff’s pending motion for temporary restraining order/preliminary injunction. To obtain a
9 temporary restraining order or preliminary injunction, a plaintiff must demonstrate a likelihood
10 of success on the merits; therefore, the motion can be said to be “more than tangentially related
11 to the merits of a case.” Therefore, the compelling reasons standard applies.

12 This court, and others within the Ninth Circuit, have recognized that the need to protect
13 medical privacy qualifies as a “compelling reason” for sealing records. *See, e.g., San Ramon*
14 *Regional Med. Ctr., Inc. v. Principal Life Ins. Co.*, 2011 WL89931, at *n.1 (N.D. Cal. Jan. 10,
15 2011); *Abbey v. Hawaii Employers Mut. Ins. Co.*, 2010 WL4715793, at * 1-2 (D. HI. Nov. 15,
16 2010); *G. v. Hawaii*, 2010 WL 267483, at *1-2 (D.HI. June 25, 2010); *Wilkins v. Ahern*, 2010
17 WL3755654 (N.D. Cal. Sept. 24, 2010); *Lombardi v. TriWest Healthcare Alliance Corp.*, 2009
18 WL 1212170, at * 1 (D.Ariz. May 4, 2009). This is because a person’s medical records contain
19 sensitive and private information about their health. While a plaintiff puts certain aspects of his
20 medical condition at issue when he files an action alleging deliberate indifference to a serious
21 medical need under the Eighth Amendment, that does not mean that the entirety of his medical
22 records filed in connection with a motion (which frequently contain records that pertain to
23 unrelated medical information) need be unnecessarily broadcast to the public. In other words, the
24 plaintiff’s interest in keeping his sensitive health information confidential outweighs the public’s
25 need for direct access to the medical records.

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1 Here, the referenced exhibits contain Plaintiff's sensitive health information, medical
2 history, and treatment records. Balancing the need for the public's access to information
3 regarding Plaintiff's medical history, treatment, and condition against the need to maintain the
4 confidentiality of Plaintiff's medical records weighs in favor of sealing these exhibits.
5 Therefore, Defendants' motions (ECF Nos. 15, 19.) are **GRANTED**.

6 **IT IS SO ORDERED.**

7 DATED: March 10, 2017.

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10 WILLIAM G. COBB
11 UNITED STATES MAGISTRATE JUDGE
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